

REMARKS

1. Finality of Office Action/Entry of Amendments

Withdrawal of the finality of the Office Action as per MPEP 706.07(d) is requested for the following reasons:

- The September 12, 2008 Final Office Action sets forth new rejections to independent claim 15 and its dependent claims (more specifically, the rejections at Sections 8 and 9 of the Final Office Action in view of U.S. Patent 3,999,244 to *Brickley* and U.S. Patent 191,608 to *Miller*), but claim 15 was not amended in the prior Response of May 22, 2008. Under MPEP 706.07(a), second (or subsequent) Actions cannot be final where a new ground of rejection is introduced that is neither (1) necessitated by applicant's amendment of the claims, nor (2) based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p). Here, elements (1) and (2) are not present, and thus finality is clearly contrary to MPEP 706.07(a) in view of the new rejections to the unamended claims.
- As discussed in greater detail below, several of the objections and rejections (and the grounds therefor) have been repeated from the Office Action of January 24, 2008. However, the Applicant argued against these objections and rejections in the prior Response of May 22, 2008. The Applicant's arguments are unanswered in the September 12, 2008 Final Office Action, leaving the Applicant to guess as to why her arguments are found unpersuasive. The Final Office Action's failure to address the Applicant's arguments is contrary to MPEP 707.07(f), Answer All Material Traversed ("Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it"); also see Examiner Notes for PTO form paragraphs 7.37 and 7.38 (as reproduced in MPEP 707.07), which require that all relevant arguments by the Applicant be addressed.
- As discussed in greater detail below, several of the rejections state that the claims are anticipated, but they do not state where each of the recited features of the claimed invention is believed to be present in the cited reference. This is contrary to 37 CFR §1.104(c)(2),

which provides that "[w]hen a reference is complex or shows or describes inventions other than that claimed by the applicant, *the particular part relied on must be designated as nearly as practicable*. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified." In at least some cases, the Applicant is left to guess as to how the Applicant's claims read on the prior art.

In accordance with MPEP 706.07, the Applicant is seeking to define the invention in terms of allowable claims, is not seeking to delay prosecution, and is trying to clarify all issues prior to appeal (if appeal should be necessary), and thus it is requested that finality be withdrawn so that these issues are fully and fairly heard.

2. The Amendments, the Support Therefor, and Basis for Entry

Two claims (24 and 25) have been canceled, new claim 36 has been added, and claims 22-23 and 27 have been amended to leave claims 15-21, 25, 27, 28, and 30-35 in the application. No new matter has been added by the amendments or new claims, wherein:

- claim 22 is amended to correct its dependency,
- claim 23 is amended to incorporate its dependent claims 24 and 25,
- claim 27 is amended to incorporate features of the preferred version of the invention shown in the application's drawings, and
- new claim 36 also recites features of the preferred version of the invention shown in the application's drawings.

As per 37 CFR §1.116(b) and MPEP 714.12/714.13, the amendments place the case either in condition for allowance or in better form for appeal, and thus are believed to be suitable for entry.

3. Sections 1-2 of the Office Action: Objections to the Abstract

This objection was responded to in the prior Response of May 22, 2008, but the Applicant's comments as to why the objection should be withdrawn is not addressed in the September 12, 2008 Final Office Action, contrary to MPEP 707.07.

To repeat, regarding the objection on the basis that the Abstract is not presented on a separate sheet, please note that the Preliminary Amendment of September 23, 2004 did indeed present the Abstract on a separate sheet (note the "Remarks" section, and the separate sheet appended to the end of the Preliminary Amendment). Kindly withdraw this objection.

4. Sections 3-4 of the Office Action: Rejection of Claims 15 and 18-21 under 35 USC §102 in view of U.S. Patent 3,170,182 to *Burian*

Initially, it is noted that page 5, Section 1.a of the Final Office Action states that:

1. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.
 - a. In regard to the old method claims being rejected with the same art. The applicant is discussing the intended use of the prior art; however, the claim recites a method of restoring material which is anything. There is no real specific use of a method being claimed in regard to specific art being practiced. The method is generic to the field being practiced.

This is understood to mean that the rejections to claim 15 and its dependent claims 18-21 and 34 do not accord any weight to the materials (hook-and-loop fastener) on which the method operates. This is plainly improper in view of MPEP 2116, which states that "[t]he materials on which a process is carried out must be accorded weight in determining the patentability of a process." If these comments are misunderstood by Applicant, kindly clarify them.

Looking then to parent claim 15, the claim is directed to "[a] method of restoring hook material used for hook and loop attachment, the hook material having stems arrayed thereupon with the stems each terminating in a hook . . . " In contrast, *Burian* plainly shows and discusses rehabilitation of a paintbrush having straight bristles, with no disclosure whatsoever of hook material. As noted in MPEP 2131, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Since this condition is not present here, kindly withdraw the rejections.

Additionally, one of ordinary skill would not regard *Burian*'s paint brush cleaning tool as being useful for restoring hook material in the manner recited in claim 1: since *Burian*'s device is designed and used for cleaning straight brush bristles, it would seem that if used on hook material,

it would bend (straighten) the hooks, thereby damaging them and rendering them useless. We therefore submit that claims 15 and 18-21 are also unobvious in view of *Burian*.

5. Section 5 of the Office Action: Rejection of Claims 15 and 18-21 under 35 USC §102 in view of U.S. Patent 3,053,264 to *Breton*

U.S. Patent 3,053,264 to *Breton* is directed to a hair brush wherein the bristles of the brush are moved between strands of hair to straighten the hair. Claim 15 and its dependent claims 18-21 are submitted to be novel and unobvious in view of this arrangement for the reasons similar to those noted in the foregoing Section 4 of this Response, i.e., *Breton* is not used to restore hook material, nor would one use *Breton* for such a purpose because the hooks would be bent and damaged by *Breton* (which is, after all, intended to *straighten* the matter through which it is run). Since *Breton* is intended to straighten the matter through which it is run, and straightening of the hooks of hook and loop material is naturally undesirable, it cannot be obvious to modify the use of *Breton* to attain the claimed matter. See, e.g., MPEP 2143.01 (subsection entitled “The Proposed Modification Cannot Render The Prior Art Unsatisfactory For Its Intended Purpose”).

6. Section 6 of the Office Action: Rejection of Claims 15 and 18-21 under 35 USC §102 in view of U.S. Patent 671,047 to *Fox*

U.S. Patent 671,047 to *Fox* is also directed to a hair brush wherein the bristles of the brush are moved between strands of hair to straighten the hair, and the comments at the foregoing Section 5 of this Response apply here as well.

7. Section 7 of the Office Action: Rejection of Claims 15 and 18-21 under 35 USC §102 in view of U.S. Patent 5,297,882 to *Korindes*

U.S. Patent 5,297,882 to *Korindes* is also directed to a hair brush wherein the bristles of the brush are moved between strands of hair to straighten the hair, and the comments at the foregoing Section 5 of this Response apply here as well.

8. Section 8 of the Office Action: Rejection of Claims 15 and 18-35 under 35 USC §102 in view of U.S. Patent 3,999,244 to *Brickley*

U.S. Patent 3,999,244 to *Brickley* is directed to a rug rake wherein the teeth of the rake are moved over the pile of a rug to raise the pile and avoid matting (see Abstract and column 1 lines 13-34). The comments at the foregoing Section 5 of this Response apply here to claims 15 and 18-22.

Regarding claim 23 and its dependent claims, claim 23 has been amended to incorporate its dependent claims 24-25 (as well as features of claim 27) to clearly differentiate claim 23 from *Brickley*.

Regarding claim 27 and its dependent claims, claim 27 recites a “plastic rake sized to fit within the hand,” and additionally recites the unique configuration of the preferred version of the invention depicted in the application’s drawings, and claim 27 is therefore clearly differentiated from *Brickley*.

9. Section 9 of the Office Action: Rejection of Claims 15 and 18-35 under 35 USC §102 in view of U.S. Patent 191,608 to *Miller*

U.S. Patent 191,608 to *Miller* is directed to a curry-comb (i.e., a horse comb) as depicted. The comments at the foregoing Section 5 of this Response apply here to claims 15 and 18-22.

Regarding claim 23 and its dependent claims, claim 23 has been amended to incorporate its dependent claims 24-25 (as well as features of claim 27) to clearly differentiate claim 23 from *Miller*.

Regarding claim 27 and its dependent claims, claim 27 recites a “plastic rake sized to fit within the hand,” and additionally recites the unique configuration of the preferred version of the invention depicted in the application’s drawings, and claim 27 is therefore clearly differentiated from *Miller*.

10. Sections 10-11 of the Office Action: Rejection of Claims 16-17 under 35 USC §103(a) in view of U.S. Patent 3,053,264 to *Breton*, U.S. Patent 671,047 to *Fox*, and/or U.S. Patent 5,297,882 to *Korindes*

These claims are submitted to be allowable for at least the same reasons as their parent claim 15. In addition, claims 16-17 recite teeth spacings which are on the sub-millimeter level – which is extremely small. When the present invention is placed out of mind to guard against hindsight, and when the cited art is considered for all that it suggests, it cannot fairly be said that an ordinary artisan would contemplate sub-millimeter spacings where all prior art shows significantly larger spacings.

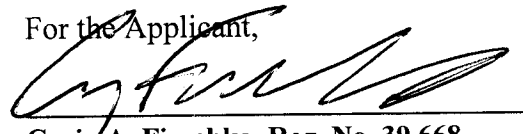
11. New Claim 36

New claim 36 recites the unique configuration of the preferred version of the invention depicted in the application's drawings, one which is not present in the art of record.

12. In Closing

If any questions regarding the application arise, please contact the undersigned attorney. Telephone calls related to this application are welcomed and encouraged. The Commissioner is authorized to charge any fees or credit any overpayments relating to this application to deposit account number 18-2055.

For the Applicant,



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